KIND ACTION (M) SDN BHD
v. KETUA PENGARAH HASIL DALAM NEGERI

COURT OF APPEAL, PUTRAJAYA
VAZEER ALAM MYDIN MEERA JCA
GUNALAN MUNIANDY JCA
HASHIM HAMZAH JCA
[CIVIL APPEAL NO: J-01(A)-70-02-2022]
13 AUGUST 2024

Abstract – *(i) The existence of a domestic remedy does not automatically bar a judicial review application. The court has the discretion to allow judicial review if there is a strong case of illegality or other grounds for review; (ii) The Inland Revenue Board ('Board') cannot issue conflicting assessments under different tax laws for the same transaction without a clear legal basis. The principle of estoppel may apply to prevent the Board from acting inconsistently or arbitrarily.*

ADMINISTRATIVE LAW: *Judicial review – Appeal – Judicial review against decision of Director General of Inland Revenue ('DGIR') – Taxpayer/company acquired lands – Taxpayer subdivided lands into smaller lots and disposed of them – Taxpayer paid taxes under Real Property Gains Tax Act 1976 ('RPGTA') and was issued certificate of clearance – DGIR adopted position that proceeds from disposal of lots subject to additional income tax under s. 4(1) of Income Tax Act 1967 ('ITA') – DGIR issued notices of additional assessment – Taxpayer aggrieved and applied for judicial review – Whether there was merit in application – Whether existence of domestic remedy under ITA bars taxpayer's application for judicial review – Whether decision or conduct of DGIR in issuing disputed notices tainted with illegality*

REVENUE LAW: *Income tax – Double taxation – Taxpayer/company acquired lands – Taxpayer subdivided lands into smaller lots and disposed of them – Taxpayer paid taxes under Real Property Gains Tax Act 1976 ('RPGTA') and was issued certificate of clearance – DGIR adopted position that proceeds from disposal of lots subject to additional income tax under s. 4(1) of Income Tax Act 1967 ('ITA') – DGIR issued notices of additional assessment – Whether there was double taxation – Whether DGIR ought to have revised and discharged assessment under RPGTA then raise taxes under ITA – Whether decision or conduct of DGIR in issuing disputed notices tainted with illegality*

The appellant had acquired three plots of land from its immediate parent company, in a transfer that was part of the group's strategy. The appellant subsequently subdivided the land into smaller lots and disposed of them

between 2007 and 2017, at the total price of RM338,037,337.33. For the disposal of the lots, the appellant paid taxes under the Real Property Gains Tax Act 1976 ('RPGTA') and was issued a certificate of clearance. In the course of a tax investigation, the respondent adopted the position that the proceeds arising from the disposal of the lots were subject to additional income tax under s. 4(1) of the Income Tax Act 1967 ('ITA'), as a business income, on the basis that the appellant's activities of realising its investments were through the nature of trade ('respondent's decision'). The appellant disagreed with the respondent's decision and proffered its explanation. The respondent rejected the appellant's explanation and proceeded to issue notices of additional assessment for years of assessment 2010, 2015 and 2018 ('disputed notices'). This prompted the appellant to apply for a judicial review, at the High Court, against the respondent's decision. In dismissing the application, the Judicial Commissioner ('JC') held that, *inter alia*, (i) the respondent was not bound by the RPGTA assessments and certificate of clearance as s. 91 of the ITA vested the power in the respondent to impose additional income tax; (ii) the respondent had not acted in bad faith or breached any rules of natural justice; and (iii) all the issues and contentions raised by the appellant were related to findings of fact that warranted the Special Commissioners of Income Tax ('SCIT') to be the proper forum for resolution. Hence, the present appeal. Objecting to the issues raised by the appellant in the appeal, the respondent argued that, *inter alia*, this was not a proper case for the appellant to bypass the avenue to appeal to the SCIT, pursuant to s. 99 of the ITA.

Held (allowing appeal with costs; setting aside decision of High Court)
Per Hashim Hamzah JCA delivering the judgment of the court:

(1) The appellant had indeed filed an appeal to the SCIT against the additional assessments and, at the same time, filed a judicial review against the respondent's decision. The existence of a domestic remedy under the ITA did not bar the appellant's application for judicial review. There is nowhere stated in O. 53 of the Rules of Court 2012 that the existence of a domestic remedy would bar an application for judicial review. Judicial review is always at the discretion of the courts. No acid test is applicable in judicial review applications, be it exceptional circumstances, error of law or abuse of power. If a good case is brought before the court for review, for instance, if there is clear illegality on the part of the decision-making authority, then, in the interest of justice, such application should be allowed. (paras 17, 20, 21 & 25)

(2) The respondent had already issued the RPGTA assessments and certificate of clearance of the appellant in respect of the land transactions pertaining to the lots. Nevertheless, the respondent proceeded to issue additional assessments through the issuance of the disputed notices

under the ITA in respect of the very same transactions. In doing so, the respondent failed or omitted to discharge or revoke the RPGTA certificate of assessments and clearance. In effect, it resulted in double taxation for the same land transactions but under two different legislations. This was clearly an illegality. Therefore, the respondent's decision or conduct, in issuing the disputed notices, was tainted with illegality. (paras 26-28)

(3) The correct procedure was for the respondent to have revised and discharged the assessment under the RPGTA and then raise the taxes under the ITA. As the respondent had already issued the RPGTA assessments and certificate of clearance with respect to the land transactions, he should consequently be bound by the same. The respondent should not be allowed to act inconsistently, arbitrarily or blow hot and cold. The principle of estoppel should apply against the respondent. (paras 36, 42 & 45)

(4) The JC erred in law in holding that the SCIT was the proper forum, under the provisions of the ITA, to deal with the merits of this case yet, in the same breath, took a completely contradictory approach in her judgment by determining the merits of the respondent's claim. This conflicted with the JC's view that, due to the existence of a domestic remedy, the appellant was precluded from pursuing the judicial review application as it was in the former that the appellant was entitled to ventilate the merits of its case fully. The effect was that the appellant was thus deprived of any rights to appeal to the SCIT. (paras 46 & 47)

Case(s) referred to:

Government Of Malaysia & Anor. v. Jagdis Singh [1987] 1 CLJ 451; [1987] CLJ (Rep) 110 SC ***(refd)***

Lai Cheng Cheong v. Sowaratnam Arumugan [1983] 1 CLJ 282; [1983] CLJ (Rep) 216 FC ***(refd)***

Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC ***(refd)***

MR Properties Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2004] 8 CLJ 459 HC ***(refd)***

Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] CLJU 143; [1978] 1 LNS 143 FC ***(refd)***

S Singaram v. Fong Peck Moi & Anor [1974] CLJU 144; [1974] 1 LNS 144 HC ***(refd)***

Teruntum Theatre Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2006] 3 CLJ 123 CA ***(dist)***

Legislation referred to:

Income Tax Act 1967, ss. 4(1), (a), 91(1), 99(1)
Real Property Gains Tax Act 1976, s. 20
Rules of Court 2012, O. 53

A *For the appellant - Anand Raj, Foong Pui Chi, Cheong Wen Yie & Thivagar Paramasivam; M/s Shearn Delamore & Co*
For the respondent - Ashrina Ramzan Ali & Surani Che Ismail; SFCs

[Editor's note: For the High Court judgment, please see Kind Action (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2022] CLJU 432; [2022] 1 LNS 432 (overruled).]
B

Reported by Najib Tamby

JUDGMENT

C **Hashim Hamzah JCA:**

Introduction

[1] This is the appellant's appeal against the decision of the learned Judicial Commissioner ("JC"), who had dismissed the appellant's application for judicial review against the decision of the respondent.
D

Background Facts

[2] Briefly, the facts leading to the present appeal are as follows.

[3] The appellant, as part of the Synthomer Group, acquired three plots of land ("the land") from its immediate parent company, Revertex Malaysia
E Sdn Bhd ("RMSB"), in a transfer that was part of the group's strategy. This transfer was executed through a sale and purchase agreement dated 24 May 2004 ("the SPA").

[4] The appellant subsequently subdivided the land into smaller lots
F ("the lots") and disposed of them between 2007 and 2017 at the total price of RM338,037,337.33. For the disposal of the lots, the appellant paid taxes under the Real Property Gains Tax Act 1976 ("RPGTA 1976") and was issued a certificate of clearance.

[5] However, in the course of a tax investigation which began in 2019, the
G respondent adopted the position that the proceeds arising from the disposal of the lots were subject to additional income tax under s. 4(1) of the Income Tax Act 1967 ("ITA 1967") as business income on the basis that the appellant's activities of realising its investments were through the nature of trade.

H **[6]** The appellant, after having been notified by the respondents of the audit findings, responded by disagreeing with the respondent's decision. The respondent rejected the appellant's explanation and justification and proceeded to issue the notices of additional assessment for years of assessment ("Y/A") 2010, 2015 and 2018 dated 3 December 2020
I ("disputed notices").

[7] The appellant then filed a judicial review application against the decision of the respondent before the High Court. After hearing both parties, the learned JC dismissed the appellant's application for judicial review. Aggrieved with the decision of the learned JC, the appellant filed this appeal.

Findings Of The Learned JC

[8] The learned JC was of the view that there was no merit in the appellant's application for judicial review against the respondent based on the following findings.

[9] Firstly, the learned JC agreed with the respondent that the disputed notices for Y/A prior to 2015 were not statutorily time-barred and found that it was the appellant who had negligently (though not fraudulently) failed to furnish the proper information and to make the proper declaration. The learned JC was of the opinion that the plea of limitation should be raised before the SCIT.

[10] Secondly, the learned JC found that the respondent was not bound by the RPGTA 1976 assessments and certificate of clearance as s. 91 of the ITA 1967 vested the power in the respondent to impose additional income tax.

[11] Thirdly, the learned JC found that the issue of double taxation did not arise as the respondent had made the necessary adjustments by considering the payment under the RPGTA 1976 made by the appellant in the additional assessments and imposition of the penalty under the ITA 1967. The learned JC also found that there was nothing sinister or bad faith on the part of the respondent's action in issuing the additional notice of assessment, as the respondent was empowered to do so under the ITA 1967.

[12] Having found that the respondent had acted within the powers conferred by the ITA 1967 and the RPGTA 1976, in the court's view, the respondent had not acted in bad faith or breached any rules of natural justice.

[13] In a nutshell, the learned JC was of the view that all the issues and contentions raised by the appellant were related to findings of fact that warranted the Special Commissioners of Income Tax ("SCIT") to be the proper forum for resolution.

Issues

[14] The appellant raised a total of 48 grounds of appeal through its additional memorandum of appeal. However, with respect to the learned JC and the respondent for this appeal, we are inclined to uphold the contentions of the appellant on the determinant contentious issues as follows.

A **Our Findings**

[15] Before us, the pith of the respondent's argument was that this was not a proper case for the appellant to bypass the avenue to appeal to the SCIT pursuant to s. 99 of the ITA 1967.

B **[16]** For the sake of completeness, s. 99(1) of the ITA 1967 reads:

> Section 99. Right of appeal.
>
> (1) Subject to subsection (1A), *a person aggrieved by an assessment made in respect of him may appeal to the Special Commissioners against the assessment by giving to the Director General within thirty days after the service of the notice of*
> C *assessment or, in the case of an appeal against an assessment made under section 92, within the first three months of the year of assessment following the year of assessment for which the assessment was made* (or within such extended period as regards those days or months as may be allowed under section 100) a written notice of appeal in the prescribed form stating the grounds of appeal and containing such other particulars as may be required by that
> D form.
>
> (emphasis added)

[17] It was undisputed in the present case that the appellant had indeed filed an appeal to the SCIT against the additional assessments and, at the same time, filed a judicial review application against the decision of the
E respondent.

[18] The respondent submitted that since the appellant had disputed the notices of assessment, the issue of whether the gains from the disposal of lands should be subjected to the ITA 1967 would require embarking on a
F fact-finding exercise pertaining to the activities carried out by the appellant, the dynamics of the relationship between the appellant, RMSB and the Synthomer Group, the appellant's accounting process, activities carried out on the lots, whether the badges of trade indicated that the transactions were trade activities or investments, and what was the overall intention of the transactions. Since intention can only be gleaned from the circumstances of
G the case, it was palpable that the facts of the case need to be scrutinised.

[19] Overall, we disagree with the respondent for the following reasons.

[20] Firstly, we hold that the existence of a domestic remedy under the ITA 1967 does not bar the appellant's application for judicial review.

H **[21]** There is nowhere stated in O. 53 of the Rules of Court 2012 ("ROC 2012") that the existence of a domestic remedy will bar an application for judicial review. The courts have long acknowledged, based on the landmark Supreme Court and Federal Court decisions, that the availability of alternative internal remedies in the form of an appeal process does not bar
I any application for judicial review.

[22] In *Government Of Malaysia & Anor v. Jagdis Singh* [1987] 1 CLJ 451; [1987] CLJ (Rep) 110; [1987] 2 MLJ 185, the Supreme Court through Hashim Yeop A Sani SCJ (as he then was) held as follows:

> A clear principle is reiterated here *ie*, *it is not a rigid rule that whenever there is an appeal procedure available to the applicant he should be denied judicial review. Judicial review is always at the discretion of the court but where there is another avenue or remedy open to the applicant it will only be exercised in very exceptional circumstances*.
>
> (emphasis added)

[23] Edgar Joseph FCJ (as he then was) speaking for the Federal Court in *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65; [1999] 3 MLJ 1 stated:

> The reason for this is that whilst in theory the courts there frequently recite the incantation that alternative remedies must be exhausted before recourse may be had to Judicial Review, in practice, the courts are often much kinder to the applicant with a good case on the merits, who is faced with this hurdle to clear and will most probably entertain his application as an exception ...
>
> ... *Speaking generally, it is right to say that if an applicant in judicial review proceedings can demonstrate illegality, that is to say, unlawful treatment, it would be wrong to insist that he exhausts his statutory right of appeal where one is available. Why should illegal action not be nipped in the bud by the quicker, more convenient and adequate remedy of Judicial Review rather appeal?* It is, of course, true that convenience in this context means convenience not only for the parties but also in the public interest. (*R v. Huntingdon District Council; ex p Cowan & Anor* [1984] 1 WLR 501(a Licensing appeal) ...
>
> ... Having said that we recognize that there are certain classes of cases such as planning, employment cases and tax cases (see, *eg, R v. Commissioner for the Special Purposes of the Income Tax Acts; ex p Napier* [1988] 3 All ER 166; *R v. Epping Forest DC; ex p 'Green* [1993] 1 COD 81) *where a statute provides for a specialised appeal procedure, and so the courts understandably may not grant judicial review but this is always subject to the grant of review in certain cases, for example, where an applicant is able to demonstrate excess or abuse of power, or breach of the rules of natural justice* (see *Accountant in bankruptcy v. Alls of Gillock* [1991] SLT 765 *Macksville & District Hospital v. Mayze* (1987) 10 NSWLR 708).
>
> (emphasis added)

[24] On a similar tone, Wan Suleiman FCJ (as he then was) speaking for the Federal Court in *Lai Cheng Cheong v. Sowaratnam Arumugan* [1983] 1 CLJ 282; [1983] CLJ (Rep) 216; [1983] 2 MLJ 113 held as follows:

> *The existence of alternative remedies have negligible effect on restricting the powers of the courts to provide relief*. At page 425 of the same edition appears the following passage, under the heading "Effect of Alternative Remedies":

> The existence of a right of appeal to the courts from a tribunal's decision does not deprive the courts of power to award prohibition to restrain the tribunal from acting outside its jurisdiction. *Nor is the applicant obliged to have exhausted prescribed administrative means of redress before having recourse to the courts.*
>
> *An applicant for certiorari is not normally obliged to have exhausted his rights of appeal within the administrative hierarchy* – see *R v. Postmaster General Ex p Carmichael* [1928] 1 KB 291.
>
> (emphasis added)

[25] Based on the above, it is axiomatic that judicial review is always at the discretion of the courts. We take it to be the law that no acid test is applicable in judicial review applications (be it exceptional circumstances, error of law, or abuse of power). Still, if a good case is brought before the court for review, for instance, if there is a clear illegality on the part of the decision-making authority, then in the interest of justice, such application should be allowed.

[26] Back to the facts in the present case, we found that the decision or conduct of the respondent in issuing the disputed notices was tainted with illegality.

[27] It was not disputed that the respondent had already issued the RPGTA 1976 assessment and certificate of clearance to the appellant in respect of the land transactions pertaining to the lots. Nevertheless, the respondent proceeded to issue additional assessments through the issuance of the disputed notices under the ITA 1967 in respect of the very same transactions.

[28] In doing so, the respondent has failed or omitted to discharge or revoke the RPGTA certificate of assessments and clearance. In effect, it resulted in double taxation for the same land transactions but under two different legislations. This is clearly an illegality.

[29] In *Teruntum Theatre Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2006] 3 CLJ 123; [2006] 4 MLJ 685, the applicant was assessed to real property gains tax under the RPGTA 1976 on the gain made arising from the disposal of the property, and a certificate of clearance was issued after the sum assessed was paid. Subsequently, the revenue took the position that the gains from the sales by the applicant should be subjected to income tax under s. 4(a) of the ITA 1976. Therefore, an amended assessment was issued.

[30] On this issue, Zaleha Zahari JCA (as she then was) stated as follows:

> [20] On the issue of double taxation, we agree that the position in Malaysia is different from that in England. *The ITA applies only to income, whilst the RPGT applies only to capital gains on real property. It has to be either one or the other, it cannot be both. Unlike in England, the question of subjecting a taxpayer to both taxes in respect of the same receipt cannot arise here.* The authorities cited by the appellant on this issue are clearly distinguishable.
>
> (emphasis added)

[31] The respondent, on the other hand, also relied on the same case in contending that there is no rule of law precluding the respondent from discharging the assessment under the RPGTA 1976 and proceeding with an assessment under the ITA 1967.

[32] The following passage of Zaleha Zahari JCA's (as she then was) judgment was quoted from *Teruntum Theatre*'s case:

> [19] We therefore agree with the conclusion that *there is no rule of law precluding Revenue from discharging the assessment under the RPGT and proceeding with an assessment under the ITA*. That Revenue is, *if the facts and circumstances warrant it, free to revise and discharge the assessment under the RPGT and to then raise an assessment under the ITA*.
>
> (emphasis added)

[33] However, the facts in *Teruntum Theatre*'s case can be distinguished from the facts in the present case. In *Teruntum Theatre*'s case, there was evidence to show that the Revenue had notified the applicant that the real property gains tax would be transferred to the applicant's account. The gain made by the applicant arising from the sales was then assessed to income tax under s. 4(a) of the ITA 1967, and the real property gains tax paid was transferred to the applicant's account.

[34] The following can be observed:

> [21] *We agree that the appellant has not been subjected for double taxation in this case*. The appellant is not subjected to two different charges in respect of the same receipt *as it has not been charged for both real property gains tax under the RPGT and income tax under the ITA. The evidence shows that Revenue*, upon taking the position that the gains arising from the sales was to be the subject of income tax, *notified the appellant that the real property gains tax paid would be transferred to the appellant's account*. The complaint is thus unwarranted.
>
> (emphasis added)

[35] Turning to the facts of the present case, the respondent before us did not dispute that the initial assessment under the RPGTA 1976 was not discharged but went on to submit that the respondent had made necessary adjustments in consideration of the payment made by the appellant under the RPGTA 1976 and decided to raise the respective assessments under the provisions of the ITA 1967. According to the respondent, they are allowed to do so under the law.

[36] We disagree with the respondent. In our view, as the law stands, the correct procedure in this instance was for the respondent to have revised and discharged the assessment under the RPGTA 1976 and then raise the taxes under the ITA 1967.

[37] On this, we agree with Raus Sharif J (as he then was) in *MR Properties Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2004] 8 CLJ 459; [2005] 7 MLJ 260, as follows:

> 14. I am of the view the same principle is applicable in Malaysia. *The respondent is not precluded from raising the assessment under ITA after reviewing the earlier assessment made under the RPGT*. To me, the respondent has the power to review or revise an assessment which include vacating an assessment on the ground that no real property gain tax is payable on the gains. *Thus, where an assessment for RPGT was made and subsequently it was discovered that there was no chargeable gain within the meaning of the RPGT and thus no real property gain tax is payable, the respondent can and must discharge the assessment …*
>
> (emphasis added)

[38] In the present case, the respondent did not discharge the assessment under the RPGTA 1976. As such, we found that the respondent's action in raising the fresh assessment under the ITA 1967 was clearly illegal and ran contrary to the principle against double taxation.

[39] It follows that the learned JC had erred in failing to appreciate that the respondent had failed to act in accordance with the law or had arguably acted *ultra vires*.

[40] Based on the established principles of common law and Malaysian public law on administrative decision-making, the respondent's discretion to impose taxes is not absolute and unfettered. Unfettered discretion is, in principle, a contradiction in terms and cannot oust the revisionary powers of the courts in instances where the discretion is not exercised in accordance with the relevant law.

[41] In *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] CLJU 143; [1978] 1 LNS 143; [1979] 1 MLJ 135, the Federal Court held as follows:

> Applying the principles stated above, what is the effect of the condition under consideration? I read the affidavit of the Chairman, Land Executive Committee as claiming an unfettered discretion to grant or reject any application under section 124 or impose such conditions or other requirements as the Committee think fit. I cannot subscribe to this proposition for a moment. Unfettered discretion is a contradiction in terms. My understanding of the authorities in these cases, and in particular the case of *Pyx Granite* (*ante*) and its progeny compel me to reject it and to uphold the decision of the learned judge. It does not seem to be realised that this argument is fallacious. Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. *In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of*

the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law. I would once again emphasise what has often been said before, that "public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place", (per Danckwerts L.J. in *Bradbury v. London Borough of Enfield* [1967] 3 All ER 434 442.)

The Land Executive Committee is a creature of statute, and therefore possesses only such power as may have been conferred on it by Parliament. *Therefore when a power vested in it is exceeded, any act done in excess of the power is invalid as being ultra vires*. If authority is needed for what may be considered as axiomatic, I need only refer to the cases of *Chertsey UDC v. Mixnam's Properties, Ltd* [1964] 2 All ER 627 and *Hall & Co Ltd v. Shoreham-by-Sea UDC* [1964] 1 WLR 240. In the former case, a statute required the occupier of land to obtain a licence before he used his land as a caravan site, and in granting such a licence the authority were empowered to impose such conditions "as the authority may think necessary or desirable to impose" it was held that these conditions must be confined within the general purpose of the Act, and in so far as they exceeded this, they were void. In the latter case, Willmer L.J. cited the well known judgment of Lord Greene M.R. in *Associated Provincial Picture Houses* (*ante*) which has several times been approved in the House of Lords, that it is in excess of power to "come to a conclusion so unreasonable that no reasonable authority could ever have come to it", and he held that the condition to be "utterly unreasonable and such as Parliament cannot possibly have intended".

(emphasis added)

[42] In our view, as the respondent had already issued the RPGTA 1976 assessment and certificate of clearance with respect to the land transactions, he should consequently be bound by the same. The respondent should not be allowed to act inconsistently, arbitrarily, or blow hot and cold.

[43] On this, we agree with Ibrahim J (as he then was) in *S Singaram v. Fong Peck Moi & Anor* [1974] CLJU 144; [1974] 1 LNS 144; [1976] 1 MLJ 237 as follows:

.. Furthermore I was of the view that defendant should not be permitted to blow hot and cold and have a second bite at the cake. In Broom's Legal Maxims, 10th Edition, at page 103 it is stated that "*He is not to be heard who alleges things contrary to each other*." As defendant had previously maintained that he was not out of time he could not now be heard to the contrary and ask for some other remedy.

(emphasis added)

[44] As in the instant case, the RPGTA 1976 assessment and certificate of clearance are final and conclusive under s. 20 of the RPGTA 1976, which states that:

> Section 20. Finality of assessment.
>
> (1) Where:
>
> (a) no valid notice of appeal against an assessment has been given under section 18 within the time specified by that section (or any extension thereof);
>
> (b) an agreement has been reached with respect to an assessment pursuant to subsection 101(2) of the Income Tax Act 1967;
>
> (c) an assessment has been determined on appeal and there is no right of further appeal; or
>
> (d) a valid notice of appeal against an assessment has been given but the appellant dies before the hearing of the appeal by the Special Commissioners is commenced or completed and no personal representatives of the estate of the deceased appellant applies to the Special Commissioners within two years after his death to proceed with or complete the hearing,
>
> the assessment as made, agreed to or determined shall be final and conclusive for the purposes of this Act.
>
> (2) Nothing in subsection (1) shall prejudice the exercise of any power conferred on the Director General by section 15 or 16A.

[45] Therefore, the principle of estoppel should apply against the respondent.

[46] In addition, the learned JC has also erred in law in holding that the SCIT is the proper forum under the provisions of the ITA 1967 to deal with the merits of this case, yet, in the same breath, took a completely contradictory approach in her judgment by determining the merits of the respondent's claim.

[47] This conflicted with the learned JC's view that due to the existence of a domestic remedy, the appellant was precluded from pursuing the judicial review application, as it was in the former that the appellant was entitled to ventilate the merits of its case fully. The effect was that the appellant was thus deprived of any right to appeal to the SCIT.

[48] In our judgment, the learned JC had erred in law and fact in arriving at her decision, which, in our considered opinion on account of the factual matrix of the instant case and the applicable principles of law, was clearly erroneous. Hence, this is a case that warranted appellate interference.

[49] In view of our agreement with the above contentions of the appellant, which we consider to be of substance, we do not propose to state our views on the other grounds of appeal for the purpose of this judgment.

Conclusion

[50] Having duly given due consideration to the rival contentions of the appellant and the respondent, respectively, and applying the law as it stands to the facts, we are inclined to uphold the appellant's contention that the learned JC has arrived at the wrong conclusion that the present judicial review application has no merits and should be dismissed.

[51] It is our considered opinion that in law and on the peculiar facts before the High Court, the judicial review application had merits and should have been allowed as the respondent's decision, on the grounds raised by the appellant. Hence, this called for judicial intervention in the exercise of the High Court's supervisory jurisdiction and discretionary powers.

[52] By reason of those mentioned above, we conclude that there are sufficient merits in this appeal that called for our interference. We accordingly allow this appeal with cost and set aside the decision of the High Court. As a result, we make an order to allow the appellant's judicial review application against the respondent before the High Court as prayed for.